

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 EUGENE DIVISION

4
5 J.N., J.N. ex rel. Cheryl)
Cisneros; E.O., E.O. ex rel.)
6 Alisha Overstreet; J.V., J.V.)
ex rel. Sarah Kaplansky; B.M.,)
7 B.M. ex rel. Traci Modugno;)
COUNCIL OF PARENT ATTORNEYS)
8 AND ADVOCATES, INC.,)

9 Plaintiffs,)

Case No. 6:19-cv-00096-AA

10 v.)

September 29, 2023, 8:01 AM

11 OREGON DEPARTMENT OF)
EDUCATION; COLT GILL, in his)
12 official capacities as)
Director of Oregon Department)
13 of Education and Deputy)
Superintendent of Public)
14 Instruction for the State of)
Oregon; TINA KOTEK,)

15 Defendants.)
16 _____)

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20 TELEPHONIC STATUS CONFERENCE

21 TRANSCRIPT OF PROCEEDINGS

22 BEFORE THE HONORABLE ANN L. AIKEN

23 UNITED STATES DISTRICT COURT JUDGE
24
25

APPEARANCES

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1 THE COURTROOM DEPUTY: Now is the time set for Civil
2 Case No. 19-96, J.N., et al., v. Oregon Department of
3 Education, et al., for status conference.

4 If you could please introduce yourselves for the record,
5 beginning with Plaintiff.

6 MS. EIDSATH: This is Hannah Benton Eidsath, National
7 Center for Youth Law, for the Plaintiff.

8 THE COURT: I'm going to ask the court reporter if
9 you could understand what was just stated, because I couldn't.

10 THE COURT REPORTER: I could. It was Hannah Eidsath.

11 THE COURT: Thank you.

12 People will need to enunciate, because that was not a
13 clear -- I couldn't -- I couldn't distinguish the individual's
14 words. If people would just speak clearly, that would be
15 great.

16 Go ahead.

17 MR. BOSSING: Good morning, Your Honor. Lewis
18 Bossing from the Bazelon Center for Mental Health Law, for
19 Plaintiffs.

20 MR. STENSON: Tom Stenson from Disability Rights
21 Oregon, for Plaintiffs, Your Honor.

22 MR. GREENBERG: Joel Greenberg --

23 MR. PACKRONE: Seth Packrone --

24 MR. GREENBERG: -- from Disability Rights Oregon, for
25 Plaintiffs.

1 MR. PACKRONE: Seth Packrone from the National Center
2 for Youth Law, for Plaintiffs.

3 MS. MONFREDO: Nina Monfredo from the National Center
4 for Youth Law, for the Plaintiffs.

5 MS. WOLOZIN: Rebecca Wolozin, National Center for
6 Youth Law, for the Plaintiffs just listening in. Thanks.

7 THE COURT REPORTER: Could you spell your last name
8 for me?

9 MS. WOLOZIN: W-O-L-O-Z-I-N.

10 THE COURT REPORTER: Thank you.

11 MS. GIORDANO: And Katherine Giordano, also for the
12 Plaintiffs, also just listening.

13 THE COURTROOM DEPUTY: Is Sheila Potter still on the
14 line?

15 MS. POTTER: I am. I'm one of the --

16 MS. ENGLANDER: Yes.

17 Go ahead, Sheila.

18 MS. POTTER: I'm sorry. Sheila Potter. I'm one of
19 the lawyers for the Defendants. I'm here with Nina Englander.

20 THE COURTROOM DEPUTY: I think that's everyone,
21 Judge. Thank you.

22 THE COURT: I lost count of how many Plaintiffs'
23 lawyers I have on this call. Is it seven? Six?

24 How many, Cathy?

25 THE COURTROOM DEPUTY: I think eight.

1 THE COURT: Eight. Okay.

2 So, Counsel, I set this status conference because I asked
3 a very simple question and I got back a very complicated
4 answer. So I decided it was probably worth my while to explain
5 the procedure and what my intent is, and to renew, and to give
6 you some guidance. Because clearly people have not really
7 thought through, to be honest, what happens next in this case.

8 So, first, Cathy, we've had the motion to dismiss, which
9 is a really what we have, on our six-month list, because
10 they're motions that are older than six months; correct? It's
11 just one motion.

12 THE COURTROOM DEPUTY: Correct.

13 THE COURT: Correct, one motion. And am I wrong that
14 it was also on the six-month list the six months before, so
15 it's really been on that list for a year? I didn't ask you to
16 double-check that last night, but can you just take a look and
17 give me an answer?

18 THE COURTROOM DEPUTY: Yes, one second.

19 THE COURT: Perfect.

20 THE COURTROOM DEPUTY: I believe so.

21 THE COURT: So, Counsel -- all of you -- we have
22 carried this motion on our reporting for over a year. I asked,
23 as a courtesy -- which I can explain, because it's clear that
24 people have not either had experience with this, which we have
25 done -- I've done repeatedly over my 25 years on this bench

1 when they're held up and stayed. The motion's been -- the
2 motion's been stayed at the parties' -- at the lawyers' request
3 to do settlement work.

4 So we haven't done the work on it, because you all asked
5 us to hold on because you wanted to settle the case, or you had
6 other things you needed to do. So we, as a courtesy, did that.
7 It is one of my oldest cases. And it is sitting, as of a year,
8 on the six-month docket that we get motions -- our job is to
9 get motions done to the best of our ability within six months.

10 So what I asked in the email that went out -- and I
11 probably should have just held this status conference myself
12 yesterday, but I really -- this was not a very difficult ask.
13 So what will happen in this case -- and you know this -- this
14 is the schedule -- I referred this to -- at the last status
15 conference, I referred this case -- after it yet again failed
16 to settle -- I referred it to Judge Pat Sullivan. And I asked
17 you to get it moving, because yet another motion was going to
18 be filed.

19 Judge Sullivan, I know, has worked diligently, because
20 we've sent her everything to review, to be prepared for a
21 settlement conference that is set next Friday, a week from
22 today, five or six days after our end-of-September deadline.
23 So you'll have a settlement conference -- a robust settlement
24 conference, I predict -- next Friday.

25 All I asked was I want to have a minute order -- which we

1 do -- a minute order that says, "This motion is dismissed with
2 leave to refile." Now, let me explain what "refile" means,
3 because clearly -- it does not mean -- I'll rule out what it
4 doesn't mean. It does not mean that everybody has to go back
5 and redo their papers and refile everything. It does not mean
6 that anything new needs to be submitted.

7 It means that when Judge Sullivan -- if she does not
8 settle this case -- refers it back to me to say I need to move
9 forward on the motions, I will have either a status conference
10 or Cathy will send a minute order out saying the motions are
11 renewed and are back on for decision. That's number 1. I'll
12 put it back as a courtesy. Take it off for this period and put
13 it right back on, should you not settle this case next Friday
14 or shortly thereafter, because settlement conferences don't
15 always happen in a single day.

16 Next, I -- there was a big discussion about hearing the
17 motions. I'm not -- why I didn't particularly concern myself
18 with a hearing date -- I have a placeholder to start with --
19 but I don't know that I'll hold an oral argument on any of
20 these motions -- either of these motions -- the old one that's
21 filed or the new one that is anticipated to be filed.

22 And I'm going to assure you that I'm going to roll -- for
23 judicial economy factor -- I'm going to roll those issues
24 together and handle them in a global ruling. But I'm not
25 guaranteeing that I won't strike the oral argument, because

1 oftentimes the issues are pretty clear. And I've had this case
2 for a long time. And I don't necessarily need argument. So
3 that argument issue is moot.

4 I'm going to suggest that -- looking at what was reported
5 at the last telephone status conference about a motion that
6 might need to be filed -- I'm going to suggest that that will
7 be -- that you'll have a chance to talk to Judge Sullivan about
8 that and have some, I think, interactive discussion about
9 whether or not that's a necessary filing, or decide that you
10 have to have that issue resolved. And, again, it will roll
11 into the motion to dismiss that's been pending for more than a
12 year.

13 Now, what will happen, just pragmatically, and what
14 happens on any judge's docket, is once that case -- that
15 motion -- the stay has been lifted, because you're out of
16 settlement discussions, and I get the word back from Judge
17 Sullivan that she did not settle the case, that case goes under
18 advisement. And my law clerks will have 60-plus days to -- and
19 if there's another motion filed, it will put you back with the
20 other motion to resolve this. So we're not -- we're not losing
21 any time at any stretch.

22 So I'm renewing my -- what I would like to do --
23 mechanically, it does not, at all, confuse the docket or make
24 it impossible to follow a procedural history in this case. In
25 fact, I've done this on another case -- this reporting

1 period -- where the lawyers just simply forgot to call and make
2 an appointment for their settlement conference.

3 So, again, the minute order, which is official, will be in
4 the record that this case was dismissed with leave to refile.
5 It will -- depending on the report I get back from Judge
6 Sullivan next Friday or thereafter, there will either be a
7 telephone status conference call or Ms. Kramer will go ahead
8 and reactivate the motions with another minute order. No work
9 has to be done by any of you. And you can decide whether or
10 not you're going to file the discussed second motion. And we
11 will let you know -- we will strike the hearing, because I'm
12 going to have to have my law clerks get ready for the hearing,
13 if we have one, or we'll just take it under advisement and
14 issue an opinion.

15 All that being said is this case has been sitting -- there
16 are, I believe, essentially two issues left. And, as I recall,
17 it's -- and confirm it for me if I'm wrong -- this is a bench
18 trial. So as we've gone through this, you're giving me
19 information all the way through. And I'll be able to make
20 decisions and take this under advisement.

21 If I need to do motions and then I have to sit through a
22 hearing where I've read everything again, I'm perfectly happy
23 to do that. But I'm trying very hard to -- when there are
24 eight lawyers on one side, and two lawyers on the other, and
25 they take -- you take all day just to decide a simple ask like

1 this, I'm very concerned about the attorneys in this case on
2 both sides.

3 So, out of an abundance of caution, and judicial economy,
4 and to be very clear -- to be able to answer any questions -- I
5 thought it important to set this status conference this
6 morning.

7 Does anybody have any questions?

8 MS. ENGLANDER: Good morning, Your Honor. This is
9 Nina Englander for Defendants. Thank you very much for that
10 explanation. That alleviates the State's concern about having
11 to refile, so we appreciate that.

12 I do have a question. I heard Your Honor just now
13 reference a motion to dismiss. I believe, just for clarity of
14 the record, that you were referring to the motion for judgment
15 on the pleadings; is that correct?

16 THE COURT: I'm -- it's on my -- hold on. I have to
17 double-check the sheet.

18 MS. ENGLANDER: It's ECF --

19 THE COURT: Hold on. Hold on. Wait. Hold on. Hold
20 on. Hold on. Hold on. Please hold on.

21 Cathy, will you recite the motion number so I have -- I
22 have the number of 165?

23 THE COURTROOM DEPUTY: 165 is motion for judgment on
24 the pleadings.

25 THE COURT: Oh, motion 165. That would be stated in

1 the minute order. Excuse me for saying "motion to dismiss."

2 MS. ENGLANDER: Okay.

3 THE COURT: It's motion on the pleadings.

4 MS. ENGLANDER: Understood. Thank you, Your Honor.
5 I just wanted to make sure I understood that.

6 And then is the -- is the proposal to -- there were other
7 motions that were referenced in the Court's email. Are all of
8 those --

9 THE COURT: Okay. Hold on. It's not a proposal.

10 MS. ENGLANDER: Okay.

11 THE COURT: What's under -- what's on my six-month
12 list is the motion 165. There may be other motions. I
13 don't --

14 MS. ENGLANDER: Okay.

15 THE COURT: Cathy, are there any other motions that
16 are pending?

17 THE COURTROOM DEPUTY: Yes. 175 is a motion to file
18 excess pages; and 176, a motion for summary judgment; 186,
19 cross-motion for summary judgment.

20 THE COURT: Those have all been stayed. But the
21 longest-filed motion is the one -- is 165. The other motions
22 will get handled as we progress. So -- but the issue is
23 there's -- 165 has been sitting there for a year. And we've
24 stayed it at your request -- the parties' request. So all I'm
25 trying to do is pull this together so we aren't piecemealing

1 and the law clerks can efficiently -- we'll take care of this
2 all globally. It will be all handled in -- they'll all go
3 under advisement. They'll all be addressed. And if you file
4 new motions, I will basically piggyback that motion so that you
5 get a global ruling.

6 MS. ENGLANDER: So this is Nina Englander again, Your
7 Honor, for Defendants. We consent to withdrawing the pending
8 motion for judgment on the pleadings -- ECF No. 165 -- with
9 leave to refile after the settlement conference with Judge
10 Sullivan, subject to the procedures that the Court identified
11 with respect to we don't actually have to refile anything.
12 It's administratively reactivated.

13 THE COURT: There are eight lawyers --

14 MS. EIDSATH: Your Honor --

15 THE COURT: -- for the Plaintiff.

16 MS. EIDSATH: Your Honor --

17 THE COURT: Is somebody going to respond?

18 MS. EIDSATH: Yes, Your Honor. This is Hannah Benton
19 Eidsath. As -- our -- thank you very much for this
20 clarification today. Our understanding now is that we are only
21 discussing ECF 165, which is the Defendants' motion. So if the
22 Defendants approve of this, we obviously concur.

23 THE COURT: I just want to be clear, because I just
24 don't know that you understand how these matters are resolved.
25 The oldest motion is 165. So it has been on my -- what they

1 call the CJRA report -- for a year. And it's listed as
2 "stayed" because the parties are -- asked to have it stayed to
3 do -- as it turns out -- for settlement work.

4 There are also other filed motions that are not yet on the
5 six-month list, which are the following: The motions that
6 Ms. Kramer talked about, cross-summary judgment motions, and
7 some minor motions that are -- that obviously accompany
8 those -- that cross-summary judgment motion.

9 If the case doesn't settle, and I renew and put back on
10 the docket the motion for judgment on the pleadings, that
11 motion, and all the other pending motions, will be -- go under
12 advisement. There may or may not be a hearing. So nobody
13 needs to worry about that hearing date. And, actually, I'd
14 just as soon strike it. And we'll have a status conference
15 with -- one way or the other -- following Judge Sullivan's
16 settlement conference. And then I'll learn whether or not
17 there's going to be another motion filed.

18 And before that motion is filed, I'm hopeful that
19 everybody's going to go to that settlement conference with
20 Judge Sullivan, and there will be a discussion about whether
21 it's necessary to file that -- what was discussed at the last
22 status conference -- that motion, based on the action by the
23 Oregon Legislature this most immediate session.

24 So that's -- I'm trying to simplify it so nobody's
25 confused, because the email back to me -- the email that you

1 didn't understand this process -- or how we were aggravating
2 all that you've filed in this case, and we've accumulated,
3 while you've been in settlement discussions. So if the work is
4 accumulated -- and I'm not going to tell you it's going to be
5 done immediately, because you're in line with many other cases
6 that the Court is responsible for. So it will go in line.

7 But I'm not -- I'm not -- at this point, until we take a
8 look at whether an oral argument is needed -- that will be
9 after my law clerk and I review everything and take a look
10 at -- there are two issues remaining. And I -- I've done a lot
11 of work in this case already. And I understand what those
12 issues are. So I don't know that I'm going to need anything
13 more than the briefs and what's going to be filed.

14 All right. Anything else that we need to take up? So I
15 have concurrence that the motion, number 165, which is labeled
16 "motion for judgment on the pleadings," is withdrawn by the
17 Defendant, with leave to refile, which means there will be a
18 telephone status conference or a notice to the court to
19 reactivate that motion should the case not settle through the
20 settlement process with Judge Sullivan, which will begin next
21 Friday. And I believe that date is -- I think it's August --
22 is October 6th.

23 Is that right, Cathy?

24 THE COURTROOM DEPUTY: Sorry. Correct. Yes, Judge.

25 THE COURT: All right. That's agreed to by the

1 Plaintiffs?

2 MS. EIDSATH: Yes, Your Honor, that is agreed to by
3 the Plaintiff.

4 THE COURT: And for the Defendants? Ms. Englander,
5 you've already consented; correct?

6 MS. ENGLANDER: Correct, Your Honor. And will the
7 minute order that you enter -- am I correct in understanding
8 you're planning to strike the 11/28 hearing, as well?

9 THE COURT: We're going to go ahead and strike the
10 hearing, because that's not realistic for anybody. Right?
11 Especially if you file additional motions. I'm going to put
12 them all together and do a global ruling. There's no reason to
13 piecemeal this case, at this point. You know, file your
14 motions, and I'll take care of all of them. And then we'll go
15 from there.

16 MS. ENGLANDER: Nothing further from the Defense,
17 Your Honor.

18 THE COURT: All right. Anything else for the
19 Plaintiffs?

20 MS. EIDSATH: Thank you, Your Honor. I have one
21 additional clarifying question. This is Hannah Benton Eidsath
22 again.

23 The -- I just wanted to clarify whether if Your Honor is
24 understanding that the case is currently stayed. I think we
25 did have some miscommunication between the parties and the

1 Court previously about the stay. The parties were under the
2 impression that the stay that was entered at ECF 147 only
3 continues through July 31st, 2022. And the parties were under
4 the impression that the case was not stayed after that point.

5 When we spoke with Your Honor at the status conference on
6 July 28th, 2023, we learned that that had been not the Court's
7 understanding. And from some of the explanation that you have
8 provided today, I just want to make sure that the parties are
9 clear as to the fact that we had understood any stay, which did
10 exist, was lifted after the July 28th, 2023 status conference.

11 THE COURT: We believe the case was stayed up until
12 July of 2023. And nobody said -- had any rules or nobody
13 inquired at all. So we had no understanding, other than --
14 and, Cathy, am I wrong about that? We had no communication
15 that it wasn't stayed. So we reported it was stayed. Because
16 it was in settlement discussions. And that was conveyed to us.
17 And that's how we -- that's how we proceeded.

18 Once we learned it wasn't stayed, we swung into action.
19 But we're going to do it efficiently, because, again, this case
20 has gone out to settlement several times. And, again, I --
21 it's back with Judge Sullivan. And so we're going to get the
22 motions resolved. That's number one.

23 We wouldn't have been able to try this case any sooner
24 than probably now, if we could have done it now, because the
25 Court did not -- and there were no in-person matters tried

1 before May 11th, 2023. And so there's no way that the trial
2 would have been held. And we're ruling on these motions at
3 this time. COVID did a lot of delay for a variety of cases and
4 for a variety of institutions. And so we've erred on the side
5 of giving people what they've -- what we believe they've
6 requested, which, in this case, was this case was always
7 reported as one that should settle. And we believe those
8 attempts were being made. And nobody told us to the contrary.

9 So this case is no longer stayed. This one motion is
10 dismissed with leave to refile. You've been directed to Judge
11 Sullivan for a settlement conference. If the case doesn't
12 settle, I've explained exactly how it will be resolved in a
13 global resolution.

14 These are class-action cases. There are extremely
15 voluminous records, and we read them thoroughly. And we will
16 get you an opinion on all of the motions, in a global sense,
17 that are pending if the case does not settle. But it will be
18 done in the normal course. There may or may not be an
19 argument. And we'll take a look at whether that's necessary so
20 that people don't have to have that looming on their calendars
21 when it's likely we may not need one.

22 Is that clarifying for everyone?

23 MS. EIDSATH: Thank you, Your Honor. I appreciate
24 that clarification.

25 THE COURT: All right. Anything further?

1 MS. EIDSATH: Not from Plaintiffs, Your Honor.

2 MS. ENGLANDER: Not from the State, Your Honor.

3 THE COURT: Thank you. We're in recess.

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5 (The proceedings adjourned at 8:26 AM.)

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C E R T I F I C A T E

J.N., et al. v. Oregon Department of Education, et al.

Case No. 6:19-cv-00096-AA

Telephonic Status Conference

September 29, 2023

I certify, by signing below, that the foregoing is a true and correct transcript, to the best of my ability, of the telephonic proceedings heard via conference call, taken by stenographic means. Due to the telephonic connection, parties appearing via speakerphone or cell phone or wearing masks due to coronavirus, speakers overlapping when speaking, speakers not identifying themselves before they speak, fast speakers, the speaker's failure to enunciate, and/or other technical difficulties that occur during telephonic proceedings, this certification is limited by the above-mentioned reasons and any technological difficulties of such proceedings occurring over the speakerphone at the United States District Court of Oregon in the above-entitled cause.

A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Kendra A. Steppler, RPR, CRR
Official Court Reporter

Signature Date: 10/11/2023

MR. BOSSING: [1] 4/17 MR. GREENBERG: [2] 4/22 4/24 MR. PACKRONE: [2] 4/23 5/1 MR. STENSON: [1] 4/20 MS. EIDSATH: [8] 4/6 13/14 13/16 13/18 16/2 16/20 18/23 19/1 MS. ENGLANDER: [11] 5/16 11/8 11/18 12/2 12/4 12/10 12/14 13/6 16/6 16/16 19/2 MS. GIORDANO: [1] 5/11 MS. MONFREDO: [1] 5/3 MS. POTTER: [2] 5/15 5/18 MS. WOLOZIN: [2] 5/5 5/9 THE COURT REPORTER: [3] 4/10 5/7 5/10 THE COURT: [26] THE COURTROOM DEPUTY: [10] 3/21 5/13 5/20 5/25 6/12 6/18 6/20 11/23 12/17 15/24 / /s/Kendra [1] 20/23 1 10/11/2023 [1] 20/23 100 [2] 3/7 3/10 10001-8602 [1] 2/24 1090 [1] 2/14 10th [1] 2/3 11/28 [1] 16/8 11th [1] 18/1 1428 [1] 2/11 147 [1] 17/2 165 [10] 11/22 11/23 11/25 12/12 12/21 12/23 13/8 13/21 13/25 15/15 175 [1] 12/17 176 [1] 12/18 186 [1] 12/18 2 200 [1] 2/4 20005 [1] 2/14 20006 [4] 2/8 2/18 2/21 3/4 2022 [1] 17/3 2023 [7] 1/10 17/6 17/10 17/12 18/1 20/5 20/23 2100 [1] 3/17 25 [1] 6/25 28 [1] 16/8 28th [2] 17/6 17/10 29 [2] 1/10 20/5 3 31st [1] 17/3	4 405 [1] 3/17 425 [4] 2/7 2/17 2/21 3/4 5 511 [1] 2/3 6 60-plus [1] 9/18 620 [1] 2/10 6:19-cv-00096-AA [2] 1/9 20/3 6th [1] 15/22 8 818 [4] 2/7 2/17 2/20 3/3 8602 [1] 2/24 8:01 [1] 1/10 8:26 [1] 19/5 8th [1] 3/17 9 96 [1] 4/2 97201 [2] 3/7 3/10 97204-1428 [1] 2/11 97205 [1] 2/4 97401 [1] 3/18 A AA [2] 1/9 20/3 ability [2] 7/9 20/8 able [3] 10/19 11/4 17/23 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